

BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation
of the

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

v.

CAPITAL HILLS ARCO/AM-PM, business form
unknown, and ALIAHO DAGMY, as an
Individual, Employer, and Managing Agent, and
HANNA DAGMY, as an Employer and
Managing Agent,

Respondents.

MELANIE KAY JOHNSON,

Complainant.

Case Nos.

E200203 H-0182-00-s
E200203 H-0182-01-s
C 03-04-018

06-03-P

DECISION

The attached Proposed Decision is deemed adopted by the Fair Employment and Housing Commission as the final decision in this matter, pursuant to California Code of Regulations, title 2, section 7435, subdivision (c).

On June 6, 2006, the Commission designated the decision as a precedential decision of the Commission. (California Code Regs., tit 2, § 7435.)

Any party adversely affected by this decision may seek judicial review of the decision under Government Code section 11523, Code of Civil Procedure section 1094.5, and California Code of Regulations, title 2, section 7437. Any petition for judicial review and related papers shall be served on the Department, the Commission, respondent, and complainant.

DATED: June 12, 2006

ANN M. NOEL
Executive and Legal Affairs Secretary
Fair Employment and Housing Commission

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PROPOSED DECISION

Administrative Law Judge Caroline L. Hunt heard this matter on behalf of the Fair Employment and Housing Commission on September 14, 2005, in Bakersfield, California. Nelson Chan, Staff Counsel, represented the Department of Fair Employment and Housing. Complainant Melanie Johnson attended the hearing. Neither respondent nor a representative on respondents' behalf appeared at hearing.

On December 8, 2005, the Commission received the Department's closing brief. On that date, the Department also submitted supplemental evidence which was received into the record. The evidentiary record was then closed. On December 23, 2005, the Commission received the transcript, and the matter was deemed submitted.

After consideration of the entire record, the administrative law judge makes the following findings of fact, determination of issues, and order.

FINDINGS OF FACT

Procedural Facts

1. On October 17, 2002, Melanie Kay Johnson (complainant) filed written, verified complaints with the Department of Fair Employment and Housing (Department) against “Capitol Hills Arco/AM-PM,” and Aliaho Dagmy, as an individual. The complaints alleged that, in the preceding year, complainant, while employed as an attendant/cashier at Capital Hills Arco AM-PM, had been raped by Aliaho Dagmy, thereby subjecting complainant to sexual discrimination in the form of sexual harassment and sexual assault. The complaints also alleged that the rape constituted an act of violence because of complainant’s sex, in violation of Government Code section 12948, incorporating Civil Code section 51.7 into the Fair Employment and Housing Act (the Act or FEHA).
2. The Department is an administrative agency empowered to issue accusations under Government Code section 12930, subdivision (h). On October 15, 2003, Jill Peterson, in her then official capacity as Interim Director of the Department, issued an accusation against Capital Hills Arco/AM-PM, business form unknown (Capital Hills Arco), and Aliaho Dagmy as an individual, owner and managing agent.
3. The Department’s accusation alleged that, on November 17, 2001, respondent Aliaho Dagmy subjected complainant to sexual harassment, violence and intimidation by threat of violence because of her sex (female), by acts of forced sexual intercourse, repeated sexual penetration with a body part other than a sexual organ, and by physically grabbing and pulling complainant, all without her consent and against her will. The Department alleged that these acts created an intimidating, hostile, offensive and violent working environment, in violation of Government Code section 12940, subdivision (j), resulting in complainant’s constructive termination. The Department further alleged that respondent Aliaho Dagmy’s violence and intimidation violated the Ralph Civil Rights Act, Civil Code section 51.7, as incorporated into the Act at Government Code section 12948. The Department also alleged that respondents failed to take all reasonable steps to prevent the harassment from occurring, in violation of Government Code section 12940, subdivision (k).
4. On November 7, 2003, the Department served the accusation and accompanying documents (the accusation package) by certified mail addressed to respondents Aliaho Dagmy, and “Capital Hills Arco/AM-PM, Hanna Dagmy,” at 15685 Oliver Street, Moreno Valley, California, 92555.
5. On November 14, 2003, the Department filed a first amended accusation, amending respondent Aliaho Dagmy’s status from “individual, owner and managing agent” to “individual, employer and managing agent,” and adding an allegation that Aliaho Dagmy was “a supervisory employee and owner” of respondent Capital Hills Arco. The Department also added “Hanna Dagmy, employer and managing agent,” as a respondent; amended the

accusation's prayer to add a request for a civil penalty and administrative fines against respondents; and otherwise re-alleged the allegations of the original accusation.

6. On November 20, 2003, the Department served the first amended accusation and accompanying documents (the first amended accusation package) by certified mail addressed to both respondents Aliaho Dagmy and Hanna Dagmy¹ at 15685 Oliver Street, Moreno Valley, California 92555 and Capital Hills Arco AM/PM, 24351 Palomino Way, Tehachapi, California, 93561.

7. Thereafter, respondents retained counsel, Lisa L. Maki, Esq. On December 15, 2003, Lisa Maki filed a Notice of Defense on respondents' behalf.

8. On December 19, 2003, respondents executed written stipulations waiving the time limitations for hearing provided at Government Code section 12968.

9. On June 30, 2005, the Department served a Notice of Hearing (the Third Amended Notice of Hearing) on respondents' attorney Lisa Maki, setting the administrative hearing in this case to commence on September 14, 2005, in Bakersfield, California.

10. On August 23, 2005, respondents' attorney Lisa Maki filed a Motion to Withdraw as Counsel in this matter, on the grounds that respondents had notified her that they had left the United States of America with no plans to return to defend this action. Respondents also terminated Maki's services as their lawyer and asked her to withdraw from this case.

11. As part of respondents' attorney's Motion to Withdraw filed with the Commission, Maki specified respondents' last known address as:

21680 Brook Drive, Apartment C,
Tehachapi, CA 93561

12. A telephonic hearing was convened on the Motion to Withdraw on September 7, 2005. Attorneys Lisa Maki and Department Staff Counsel Nelson Chan appeared. There was no appearance by respondents Aliaho Dagmy and Hanna Dagmy.

13. On September 8, 2005, on proof of respondents' attorney's compliance with Rules of Court Rule 376 by service on respondents at their last known address of record, the undersigned administrative law judge granted Lisa Maki's Motion to Withdraw as attorney for respondents.

14. The administrative hearing in this case took place on September 14, 2005, in Bakersfield. Neither respondent Aliaho Dagmy nor Hanna Dagmy, nor any representative on

¹ Throughout this decision, the names Aliaho Dagmy and Hanna Dagmy, respectively, are used to refer to respondents, unless otherwise indicated.

their behalf, appeared or participated at hearing. The matter proceeded as a default hearing against respondents.

15. The evidentiary record was kept open on September 14, 2005, for the limited purpose of permitting the introduction of additional documents by the Department. The Department submitted the documents to the Commission on December 8, 2005, and they were received into evidence, as detailed hereunder.²

16. Respondent Aliaho Dagmy is also known as Eliaho Dagmy, Eli Dagmy and Elihou Dagmy. He was born on February 20, 1944. Hanna Dagmy is also known as Lilaeh Dagmy, Lilach Hana Dagmy, Lilach Hanna Dagmy, and Hanna L. Dagmy and Hana L. Dagmy. Her date of birth is February 23, 1959.³

Capital Hills Arco AM-PM

17. In February 1998, respondent Hanna Dagmy applied for and was granted a franchise for an Arco gas station and mini-mart known as Capital Hills Arco AM-PM (Capital Hills Arco), located at 1050 Capital Hills Parkway, Tehachapi, California. In March 1998, Hanna Dagmy (as Lilach Hana Dagmy) and her husband Aliaho Dagmy purchased the 1050 Capital Hills Parkway, Tehachapi property as “husband and wife as joint tenants.” Thereafter, and at all times relevant, respondents Aliaho Dagmy and Hanna Dagmy owned and operated the gas station and mini-mart selling gas, lottery tickets, liquor, etc. under a

² On December 8, 2005, the following exhibits numbered 14 through 25 were received into evidence and the evidentiary record was then closed:

- Exhibit 14: Respondents’ Arco Franchise application with cover letter of August 4, 2005 by Ron Rapp;
- Exhibit 15: Copies of Respondents’ Resident Alien Cards;
- Exhibit 16: Declaration of Rebecca Rule signed September 13, 2005;
- Exhibit 17: Rebecca Rule’s Curriculum Vitae;
- Exhibit 18: Signed Statement by Rebecca Rule dated December 13, 2001;
- Exhibit 19: Hall Ambulance Service Inc. Invoice dated March 4, 2002;
- Exhibit 20: Tehachapi Valley Healthcare District bill dated March 13, 2002;
- Exhibit 21: Bakersfield Credit Control Service Notice for creditor Catholic Healthcare West to complainant dated January 1, 2004;
- Exhibit 22: Kern Medical Center past due notice to complainant dated February 18, 2002;
- Exhibit 23: CA Emergency Physicians Statement Dated August 19, 2002;
- Exhibit 24: Fax Coversheet “job applications” from complainant dated November 17, 2005; and
- Exhibit 25: Highlighted extracts of Exhibit 8.

³ Respondents were permanent residents in the United States registered with the then-Department of Justice-Immigration and Naturalization Service. They were each issued Alien Registration identification cards (“green cards”) as follows: Aliaho Dagmy was issued his green card as Eliahu Dagmy, alien number AO44369897; and Hanna Dagmy was issued her green card as Lilaeh Dagmy, alien number AO44369897.

City of Tehachapi business license issued to them jointly, doing business as Capital Hills Arco.⁴

18. At Capital Hills Arco, respondents regularly employed at least five cashiers and gas station attendants. The gas station and mini-mart were open 24 hours a day. Respondents supervised the cashiers, and Hanna Dagmy at times worked the cash register, but generally the cashiers worked their shifts alone. Both respondents Aliaho Dagmy and Hanna Dagmy were employers within the meaning of Government Code sections 12926, subdivision (d), and 12940, subdivision (j)(4)(A). Aliaho Dagmy was also a “person” under Government Code section 12948.

19. On October 19, 2001, Melanie Johnson, a 21 year old female, started work at respondent Capital Hills Arco as a part-time attendant and cashier, earning the minimum wage of \$6.25 an hour. She understood she was to work up to 30 hours per week. Johnson had heard about the opening from a friend, Renee Pereling. At the store, Johnson was interviewed by both Aliaho Dagmy and Hanna Dagmy, and was hired immediately.

20. Johnson received on-the-job training from both Aliaho Dagmy and Hanna Dagmy. On her first day, she worked alongside co-employee Renee Pereling. Thereafter, she worked her shift on her own. Complainant was saving to go to school, so she was happy to have the job at Capital Hills Arco.

21. Respondents paid their employees on a two-week payroll basis. From October 19 to 31, 2001, Johnson worked 36 hours at Capital Hills Arco, earning \$225. From November 1 to 15, 2001, she worked 52 hours, earning \$325. On November 16, 2001, complainant worked four hours, earning \$25.

22. On the afternoon of November 16, 2001, respondent Aliaho Dagmy approached Johnson at work. He asked her if she was interested in earning an extra \$100, telling her that he needed someone to accompany him to Sacramento that night to deliver a new “fifth wheel” trailer.⁵

23. When Johnson explained that she was scheduled to work the next evening, Aliaho Dagmy changed Johnson’s work schedule, so that she was not scheduled at the gas station and could instead accompany him to Sacramento. She was glad of the opportunity to earn the extra money, and agreed to accompany him to deliver the fifth wheel. He gave her \$20 cash for incidentals and promised payment of an extra \$100 in her next paycheck.

⁴ Respondents Aliaho and Hanna Dagmy, dba Capital Hills Arco, were issued licenses from both the California Department of Alcoholic Beverage Control and California Lottery to sell, respectively, alcohol and lottery tickets.

⁵ A fifth wheel is a type of trailer attached to the back of a truck.

24. Sometime after 9:00 p.m. that evening, November 16, 2001, Aliaho Dagmy picked Johnson up from Capital Hills Arco They set out for Sacramento, with Dagmy driving the truck, towing the fifth wheel trailer. Around 2:00 a.m., Aliaho Dagmy pulled over at a rest stop near Turlock on Highway 99. The rest stop was unimproved, apart from a restroom block. Aliaho Dagmy told Johnson that they would be sleeping that night at the rest stop, with Johnson in the fifth wheel trailer and Dagmy in the truck.

25. Johnson got into the trailer and lay down to go to sleep, fully dressed. As she was about to fall asleep, Aliaho Dagmy entered the trailer and lay down on the bed next to her. He grabbed her, wrapping his arms around her and began kissing her. Johnson told him “No. “You can’t do this, stop.” He ignored her, placed his body on top of hers, and grabbed her hands, holding her down by her wrists. She was frightened, crying, and knew trying to fight him would be useless, given his strength. He held her hands above her head so tightly that she was crying in pain. He then pulled off her clothes, and forcibly raped her.

26. During the rape, Johnson believed Aliaho Dagmy was going to kill her. She envisaged her parents receiving the call that her body had been found at a rest stop by the side of the highway. She believed that no one would hear her screams.

27. At some point, Johnson convinced Dagmy that she needed to go to the restroom. He let her go, saying “Hurry up, I’m not done with you.” She ran to the women’s restrooms and stayed inside, crying and afraid to leave. When she came out, Dagmy was waiting outside the women’s restroom. He grabbed her by the arm, pulled her hands behind her head, dragging her back toward the trailer. She screamed for help, yelling “He’s going to kill me, please help me.”

28. When a van pulled up and the driver’s door opened, Aliaho Dagmy relaxed his grip and Johnson broke free, hiding among parked semi-trailers. She made her way to a public telephone near the restrooms and called her father, Richard Johnson. Sobbing hysterically, she told her father that her employer Aliaho Dagmy had raped her. Her father told her to call 911, then immediately set out from his home in Tehachapi to go to his daughter.

29. While Johnson was still on the phone, Aliaho Dagmy appeared. Johnson ran, terrified. The night was foggy. She hid from him, imagining him appearing out of the fog to attack her again. Dagmy stalked her through out the rest stop. Each time he approached her, Johnson ran, crawling under big rigs to conceal herself.

30. After about half an hour, Johnson made her way back to the public telephone to call 911. A young man approached her and asked if she was all right.⁶ She pleaded with him to stay with her. The young man assured her he would, and stood next to her while she spoke to the dispatcher at 911. Aliaho Dagmy then came up to them, and Johnson screamed, “Keep

⁶ The name of the young man at the rest stop was not identified in the record.

him away from me, and “Don’t leave me.” The young man told her that he would stay with her and offered to “kick [Dagmy’s] ass.”

31. Aliaho Dagmy then left the rest stop area in the truck and fifth wheel, heading north on Highway 99.

32. Stanislaus County Sheriff’s deputies responded to Johnson’s 911 call, arriving at the rest stop at 3:31 a.m. When the first officer, Deputy Fink, arrived, Johnson collapsed at the deputy’s feet.

33. After Johnson provided a description, Sheriff’s deputies arrested Aliaho Dagmy in Modesto, at about 4:30 a.m. that night, November 17, 2001.

34. The Sheriff’s deputies took Johnson to Doctors Medical Center in Modesto, California. Johnson felt violated and sick, and was crying and shaking. She wanted to “burn [her] skin off.” She had a large bruise on her left hand and both hands were swollen and painful.

35. Johnson underwent the forensic procedures of swabs, photographs and the rape kit examination. She was given a “cocktail” of drugs to protect her from sexually transmitted diseases. All her clothing was taken into evidence.

Criminal Proceedings Against Respondent Aliaho Dagmy

36. Arising from the attack on Johnson on November 17, 2001, the Stanislaus County District Attorney filed criminal felony proceedings against Aliaho Dagmy.⁷ He was charged with two felony violations of the Penal Code: (1) section 261, subdivision 2 (forcible rape), and (2) section 289, subdivision (a)(1) (forcible sexual assault with a foreign object), in the case entitled *People v. Dagmy*, Superior Court of Stanislaus County, Case No. 1035556.

37. On or about February 3, 2005, in the criminal proceedings Aliaho Dagmy pleaded *nolo contendere* to a lesser charge of a violation of Penal Code section 243.4 (sexual battery).⁸ He was sentenced to time served (one day in jail) and three years’ informal

⁷ In the Information filed by the Stanislaus County District Attorney, Aliaho Dagmy was named as defendant “Eliaho Dagmy.”

⁸ Penal Code section 243.4 provides, in pertinent part:

(a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000)....

probation. The Stanislaus County Superior Court also ordered Aliaho Dagmy to register as a sex offender.

38. In about April 2005, respondents Aliaho and Hanna Dagmy left the United States. On April 5, 2005, Aliaho Dagmy, by his attorney in the criminal proceedings, C. David Eyster of the Chase Law Group, notified the Stanislaus County Superior Court in writing that Aliaho Dagmy had changed his address to:

55a Gidon Ben Yuash
Ashkelon 78000
Israel.

Respondents, however, failed to notify the Department of this address, as required under California Code of Regulations, title 2, section 7403, subdivision (a).

39. Prior to the hearing in this case, Johnson ascertained that Aliaho Dagmy had not registered as a sex offender, as ordered by Stanislaus County Superior Court.

Complainant's Emotional and Physical Injuries

40. Complainant was profoundly emotionally damaged as a direct result of being raped by Aliaho Dagmy. The attack undermined complainant's self confidence and sense of safety. She felt humiliated and horrified, overwhelmed with feelings of despair.

⁸ (Continued)

(e)(1) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. However, if the defendant was an employer and the victim was an employee of the defendant, the misdemeanor sexual battery shall be punishable by a fine not exceeding three thousand dollars (\$3,000), by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Notwithstanding any other provision of law, any amount of a fine above two thousand dollars (\$2,000) which is collected from a defendant for a violation of this subdivision shall be transmitted to the State Treasury and, upon appropriation by the Legislature, distributed to the Department of Fair Employment and Housing for the purpose of enforcement of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), including, but not limited to, laws that proscribe sexual harassment in places of employment. However, in no event shall an amount over two thousand dollars (\$2,000) be transmitted to the State Treasury until all fines, including any restitution fines that may have been imposed upon the defendant, have been paid in full....

(h) This section shall not be construed to limit or prevent prosecution under any other law which also proscribes course of conduct that also is proscribed by this section.
(Penal Code, § 243.4, subd. (a), (e) and (h).)

41. Complainant had recurring thoughts about dying, and that Aliaho Dagmy would find her to “finish the job,” i.e., that he would try and kill her. Johnson experienced long term ongoing guilt, helplessness, hopelessness and anger resulting from the attack.

42. Previously, Johnson had been a trusting, friendly, outgoing person with a happy, easy-going outlook on life. Her dream and career goal had been to go to school to continue her studies in veterinary science. After the attack, she could no longer trust people. She felt humiliated and filled with feelings of shame. She could not sleep at night. In the first three months following the rape she lost about 25 pounds. She experienced overwhelming panic attacks that incapacitated her, preventing her participating in family gatherings. She took constant showers, trying to get rid of the feeling of Aliaho Dagmy on her skin, saying “I don’t feel...clean.” The psychological damage resulting from the rape limited Johnson’s ability to work and sustain relationships.

43. Starting in December 2001, Johnson saw a counselor, Rebecca Rule, M.S., a licensed marriage and family therapist, working at Country Oak Counseling in Tehachapi. Rule observed that Johnson manifested symptoms of extensive emotional damages as a result of the rape, including recurring nightmares of the attack, re-living the experience, and avoiding activities that evoked memories of the rape. Rule also noted Johnson’s experienced ongoing feelings of estrangement from her loved ones, insomnia, irritability, difficulty concentrating, hypervigilance and exaggerated startle response. Using the DSM IV Guidelines,⁹ Rebecca Rule diagnosed Johnson with post traumatic stress disorder resulting from Aliaho Dagmy’s raping her.

44. On December 13, 2001, Rebecca Rule wrote to the Victim Witness program in Bakersfield, California, describing Johnson’s need for continuing counseling and advising that it would be beneficial for Johnson to move away from the area, both for her own protection and to alleviate her stress symptoms.

45. On December 30, 2001, Johnson was treated at Kern Medical Center for the worsening pain in her hands and wrists, resulting from Aliaho Dagmy’s physically restraining her by the wrists while raping her. Johnson’s left wrist in particular was swollen and painful. The attending doctor at Kern Medical Center also noted a lump on Johnson’s thigh, resulting from where Dagmy had bitten her during the rape.

46. Johnson continued as a patient with Rebecca Rule until March 2002, but lacked the financial resources to pay for ongoing counseling.

47. Overwhelmed by feelings of despair and hopelessness triggered by the rape, on March 4, 2002, Johnson tried to commit suicide. She was transported by ambulance to Tehachapi Hospital, and transferred to Kern Medical Center, in Bakersfield. Johnson was treated for acetaminophen (Tylenol) overdose and diagnosed with major depressive and post

⁹ Amer. Psychiatric Assn. Diagnostic & Statistical Manual of Mental Disorders (4th Ed. 1994) Washington, D.C. (DSM-IV.)

traumatic stress disorders. The Hospital released her on March 7, 2002, to the care of her mother, Rebecca Slighon, with a recommendation of ongoing follow up therapy.

48. Continuing to the date of hearing, Johnson experienced difficulty sleeping at night. She continued to feel vulnerable and afraid of being alone. She had ongoing fears that Aliaho Dagmy would find her and attack her again.

49. Johnson also suffered panic attacks. On at least three occasions, she was overwhelmed with anxiety and fear and unable to breathe.

50. Johnson's symptoms of post traumatic stress disorder and depression made it difficult for Johnson to look for work. She felt apprehensive at the thought of working for anyone, given what Aliaho Dagmy had done. Nevertheless, Johnson needed to work to earn money to go back to school. She applied for jobs in the Tehachapi area, including at Burger King, Taco Bell, Shell Food Market, McDonald's, Circle K, Albertson's, Domino's Pizza, Little Caesar's, Subway, S&H Food Market and Stage Stop. Despite these efforts, she was unable to find work.

51. Complainant's medical bills relating to the injuries she sustained as a result of respondent Aliaho Dagmy's raping her included: CA Emergency Physicians, treatment date November 17, 2001, in the sum of \$162; Kern Medical Center, treatment date December 30, 2001, in the sum of \$250.23; Hall Ambulance Service Inc., March 4, 2002, in the sum of \$1,306.40; Tehachapi Valley Healthcare District, admission date March 4, 2002, in the sum of \$1,052.50; and Catholic Healthcare West in the sum of \$48.55.

52. At the time of hearing, Johnson's hands remained damaged and painful, serving as a constant reminder of what Aliaho Dagmy had done to her.

53. In an affidavit dated September 13, 2005, therapist Rebecca Rule stated that Johnson needed ongoing weekly therapy for one to two years to address the emotional and psychological damage she sustained as a result of the rape.

DETERMINATION OF ISSUES

Jurisdiction

The Commission has authority to proceed in a default case and may issue an order adverse to respondents who do not appear at hearing to contest the Department's charges, providing that the Department establishes that it has effected proper service over respondents. (Cal. Code Regs., tit. 2, §§ 7407, subd. (e), and 7430, subd. (b).)

Proper service was shown here. The Department established that both respondents Aliaho Dagmy and Hanna Dagmy were served with the original and first amended

accusation packages, and that their attorney Lisa Maki filed a Notice of Defense on their behalf. (Cal. Code Regs., tit. 2, §§ 7412, 7407, subd. (e).) The Department also established that on June 30, 2005, it served respondents' attorney with the Third Amended Notice of Hearing. This mailing was sufficiently in advance of the September 14, 2005, hearing date to constitute timely notice of the hearing. (Cal. Code of Regs., tit. 2, § 7414, subd. (b).) Moreover, respondents indicated that they had no intention of defending this action, instructing their then attorney, Lisa Maki, to withdraw as counsel of record.

Based on this record, the Department established that it effected proper service on respondents. The Commission thus has jurisdiction to decide this case as a default proceeding and is authorized to issue an order adverse to respondents. (Cal. Code Regs., tit. 2, §§ 7407, subd. (e), and 7430, subd. (b).) Under the Commission's regulations, this decision may be based on express admissions by respondents, declarations under penalty of perjury, and other evidence introduced at hearing by the Department. (Cal. Code Regs., tit. 2, § 7430, subd. (a).)

Liability

A. Sexual Harassment

The Department alleges that respondent Aliaho Dagmy sexually harassed complainant, in violation of Government Code section 12940, subdivision (j). A violation under subdivision (j) may be established by proving that respondent engaged in harassment based on complainant's sex and that the harassment created a hostile or abusive work environment, regardless of whether the complainant suffered tangible or economic loss such as a promotion, pay increase, or the job itself. (Gov. Code § 12940, subd. (j)(1); *Beyda v. City of Los Angeles* (1998) 65 Cal.App.4th 511, 516-517; *Mogilefsky v. Superior Court* (1993) 20 Cal.App.4th 1409, 1413-1414; *Fisher v. San Pedro Peninsular Hospital* (1989) 214 Cal.App.3d 590, 605; *Dept. Fair Empl. & Hous. v. Bottoms* (March 30, 2005) No. 05-03-P, 2005 WL 1182392, *10 (Cal.F.E.H.C.); *Dept. Fair Empl. & Hous. v. Jarvis* (Jan. 18, 2001) No. 01-02-P, FEHC Precedential Decs. 2001, CEB 1, p. 8 [2001 WL 273486].)

1. Whether Unwanted Sexual Conduct Occurred

Complainant credibly and convincingly testified that on November 17, 2001, respondent Aliaho Dagmy forcibly attacked and raped her, injuring her both physically and psychologically. On this record, the Department has proven that complainant was subjected to unwelcome sexual conduct by respondent Aliaho Dagmy, as credibly testified to by complainant and described in the Findings of Fact.

2. Hostile Work Environment

Complainant, like all employees, is entitled to the benefit of a "discrimination-free workplace," a work environment free of harassment. (Cal. Code of Regs., tit. 2, §§ 7286.5, subds. (f), and (f)(3), and 7287.6, subd. (b); *Dept. Fair Empl. & Hous. v. Jarvis*, *supra*, 2001

CEB 1, at p. 7; see also *Harris v. Forklift Sys., Inc.* 510 U.S. 17, 21-22; *Meritor Sav. Bank, FSB v. Vinson* (1986) 477 U.S. 57, 65; *Birschtein v. New United Motor Manufacturing, supra*, 92 Cal.App.4th at p. 1000.

In cases alleging hostile work environment sexual harassment, the Department must establish that the conduct complained of was severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their sex. (*Miller v. Dept. of Corrections* (2005) 36 Cal.4th 446, 462. The “harassment need not be severe and pervasive in order to impose liability; either severe or pervasive will suffice.” (*Sheffield v. Los Angeles County Dept. of Social Services* (2003) 109 Cal.App.4th 153, 161-162.) The objective severity of the harassment is judged from the perspective of a reasonable person in the complainant’s position, considering all of the circumstances, and is guided by common sense and sensitivity to social context. (*Beyda v. City of Los Angeles, supra*, 65 Cal.App.4th at p. 517, citing *Oncale v. Sundowner Offshore Services, Inc.* (1998) 523 U.S. 75, 81; *Dept. Fair Empl. & Hous. v. Bottoms, supra*, 2005 WL 1182392, at *12; *Dept. Fair Empl. & Hous. v. Jarvis, supra*, 2001, CEB 1, at p. 10.)

A single incident may be sufficiently severe to create a hostile working environment. (*Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038, 1042, [plaintiff permitted to proceed on hostile work environment harassment claim based on allegations he was drugged and gang-raped].¹⁰ The fact that the sexual harassment may also be criminal in no way undermines the potential actionable culpability of an employer. (*Doe v. Capital Cities, supra*, 50 Cal.App.4th at p. 1046.)

Complainant credibly testified that respondent Dagmy raped her in a sustained sexual and physical attack during a work-related trip. The rape was unquestionably sufficiently severe, both on an objective and subjective perspective, to irremediably alter complainant’s work environment, rendering it hostile.

Accordingly, the Department established that respondent Dagmy subjected complainant to sexual harassment in violation of the Act. (Gov. Code, § 12940, subd. (j).)

¹⁰ See also *Herberg v. California Institute of the Arts* (2002) 101 Cal.App.4th 142, 151-154, holding that a single incident during which student artwork was displayed depicting faculty engaged in sexual acts did not create a severe or pervasive hostile work environment under the facts of that case. The *Herberg* court recognized that the conduct “did not begin to approach the severity of rape or violent sexual assault or even milder forms of unwanted physical conduct,” citing *Ellison v. Brady* (9th Cir.1991) 924 F.2d 872, 877-878 [dictum, a single incident of forcible rape might be sufficiently severe to create a hostile working environment]; *Department of Corrections v. State Personnel Bd.* (1997) 59 Cal.App.4th 131, 134, [potential liability for hostile work environment resulting from single incident of rape]; *Doe v. Capital Cities* 50 Cal.App.4th, *supra*, at p. 1046; *Little v. Windermere Relocation, Inc.* (9th Cir. 2001) 265 F.3d 903 [summary judgment in favor of defendant reversed where the plaintiff’s hostile work environment claim was based on a rape]; *Radtke v. Everett* (1993) 442 Mich. 368, 395 [501 N.W.2d 155, 168] [under Michigan law, “[a]lthough rare, single incidents may create a hostile environment--rape and violent sexual assault are two possible scenarios”].)

3. Respondents' Liability

The Department alleges that both respondents Aliaho Dagmy and Hannah Dagmy are liable for the sexual harassment of Johnson by Aliaho Dagmy.

Respondent Aliaho Dagmy is personally liable as an employer for his own conduct of sexually harassing complainant, pursuant to Government Code section 12940, subdivision (j)(1).

The Department argues Hanna Dagmy is liable also, as an owner and employer. This position is correct. Based on the evidence at hearing, Hanna Dagmy was a co-owner of Capital Hills Arco and, together with Aliaho Dagmy, Johnson's co-employer. The record showed that Hanna Dagmy originally applied for the Arco franchise in her name as a sole proprietorship. The record established that she then acquired the underlying real property in joint tenancy with Aliaho Dagmy, and on the business license issued by the City of Tehachapi, listed herself as co-owner with Aliaho (Eli) Dagmy. The record showed that they jointly ran the gas station and mini mart, with responsibility for hiring, firing, and supervision of the employees, including complainant Johnson.

As Johnson's co-employer, Hanna Dagmy is strictly liable for the hostile work environment created by co-employer Aliaho Dagmy's conduct. (Gov. Code, § 12940, subds. (j)(1) and (j)4(A); see *State Department of Health Services v. Sup. Court* (2003) 31 Cal.4th 1026, 1042); *Dept. Fair Empl. & Hous. v. Bee Hive Answering Service* (June 7, 1984) FEHC Dec. No. 84-16, at pp. 11-12 [1984 WL 54296; 1984-85 CEB 8].)¹¹

Accordingly, both Aliaho Dagmy and Hannah Dagmy will each be held liable for the violation of Government Code section 12940, subdivision (j), under the Act.

B. Ralph Civil Rights Act

The Department asserts that respondent Aliaho Dagmy is also liable for violating Civil Code section 51.7, the Ralph Civil Rights Act, which is incorporated into the FEHA by Government Code section 12948. The Department argues that respondent Aliaho Dagmy's rape of Johnson was "fundamentally violent and sexual in nature" and thereby constituted a violation of the Ralph Civil Rights Act. This decision agrees.

The Ralph Civil Rights Act protects the rights of all persons within California to be free from any violence or threats of violence against their persons because of their sex. A

¹¹ The Department also asserts that respondents are liable for violations of Government Code section 12940, subdivisions (a) and (k). This decision declines to find these additional violations for the following reasons. Having found respondents violated Government Code section 12940, subdivision (j), by creating a hostile work environment, it is not necessary to reach whether the same conduct also violated subdivision (a). In regard to subdivision (k), the record did not reveal what, if any, steps respondents may have taken to try and prevent discrimination and harassment. The absence of any such evidence, however, is not sufficient to meet the Department's burden to prove the violation, which is accordingly dismissed.

violation of the Ralph Act, as incorporated into FEHA through Government Code section 12948, is established if a preponderance of the evidence demonstrates that respondent engaged in violence or intimidation by threat of violence toward complainant and that there is a causal connection between complainant's sex and this violence or intimidation by threat. Sex need not be the dominant cause of respondent's violence or threats. A violation is established if such a factor was any part of the motivation for respondent's conduct. (*Dept. Fair Empl. & Hous. v. Bottoms*, *supra*, 2005 WL 1182392, at *13; *Dept. Fair Empl. & Hous. v. Lake County Dept. of Health Services* (July 10, 1998) No. 98-11, FEHC Precedential Decs. 1998, 1998-1999, CEB 1, pp. 31-32, disapproved on another ground in *Carrisales v. Dept. of Corrections* (1999) 21 Cal.4th 1132, 1138-9, superseded by Stats. 1993, ch. 711, § 2.)

The Department met that standard here. Respondent Dagmy's rape of complainant was an act of violence based on her sex, viciously perpetrated in a terrifying and threatening attack. Aliaho Dagmy's acts of violence and intimidation started with his raping her in the trailer, where he physically restrained her, and continued by his grabbing her then stalking her throughout the rest stop. Aliaho used his strength and force to intimidate and injure complainant, both physically and mentally.

Accordingly, respondent Aliaho Dagmy was proven to have violated Civil Code section 51.7, as incorporated into FEHA by Government Code section 12948.

Remedies

A. Make-Whole Relief

Having established that respondent sexually harassed and sexually assaulted complainant with violence because of her sex, in violation of the FEHA and Ralph Act, the Department is entitled to an order of whatever forms of relief are necessary to make complainant whole for any loss or injury she suffered as a result of such harassment. The Department must demonstrate the nature and extent of the resultant injury, and respondent must demonstrate any bar or excuse he asserts to any part of these remedies. (Gov. Code, § 12970, subd. (a); Cal. Code Regs., tit. 2, § 7286.9; *Dept. Fair Empl. & Hous. v. Madera County* (Apr. 26, 1990) No. 90-03, FEHC Precedential Decs. 1990-91, CEB 1 at p. 34 [1990 WL 312871 (Cal.F.E.H.C.)].)

The Department's first amended accusation requested an award of complainant's lost wages, out-of-pocket damages, actual damages for emotional distress, an administrative fine, a civil penalty, affirmative relief and such other relief as the Commission deems appropriate.

1. Back Pay

The Department asserts that complainant was constructively discharged from her employment and thus should be awarded back pay from her last day of work, November 16, 2001, to the date of hearing, September 14, 2005.

To establish a constructive discharge, the Department must establish, by a preponderance of the evidence, that the employer either intentionally created or knowingly permitted working conditions that were so intolerable or aggravated at the time of the employee's resignation that a reasonable employer would realize that a reasonable person in the employee's position would be compelled to resign. (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1251; *Dept. Fair Empl. & Hous. v. Bottoms, supra*, 2005 WL 1182392, at *15.) That standard is met here.

Aliaho Dagmy's violent sexual assault on complainant resulting in her long term physical and psychological damage constitutes the intentional creation of intolerable working conditions sufficient to compel a reasonable employee to resign. The Department thus established that complainant was constructively discharged from her employment with Capital Hills Arco on November 17, 2001, and she is therefore entitled to back pay.

The burden to establish that a complainant failed to mitigate her wage loss is on the employer. (*Parker v. Twentieth Century-Fox Film Corp.* (1970) 3 Cal.3d 176, 181-182.) There was no such showing in this case. Here, the Department demonstrated through the testimony of both complainant and her therapist Rebecca Rule that Johnson's ability to look for work was severely affected by the rape by her employer. She feared working for someone else. Nevertheless, because she wanted to continue her studies in veterinary science, she needed to find a job. As a result, as the record reflects, complainant made diligent efforts to find alternative employment in the Tehachapi area, without success.

Based on her employment at Capital Hills Arco from October 19 to November 16, 2001, complainant worked an average of 23 hours per week at \$6.25 per hour, earning an average of \$143.75 per week. From November 17, 2001 to September 14, 2005, a period of 199.57 weeks, complainant would have earned \$28,688. That sum will be awarded to complainant as back pay, plus interest thereon, at the rate of ten percent per year, compounded annually, from the effective date the earnings accrued until the date of payment.

2. Front Pay

The record established that complainant was significantly psychologically damaged as a direct result of respondent Aliaho Dagmy's sexual attack on her person. The rape severely limited complainant's self confidence and ability to find work. This is a setting where an award of front pay is appropriate to compensate Johnson for her continuing wage loss after the hearing. Reinstatement is neither possible nor appropriate for complainant, given the circumstances of this case. (See *Dept. Fair Empl. & Hous. v. Wal-Mart Stores, Inc.* (June 7, 2005) No. 05-04-P, p. 13, 2005 WL 1703228 (Cal.F.E.H.C.); *Dept. Fair Empl. & Hous. v. The Standard Register Company* (Mar. 29, 1999) No. 99-04, p. 23, FEHC Precedential Decs. 1999, CEB 2 [1999 WL 335138 (Cal.F.E.H.C.)]; *Dept. Fair Empl. & Hous. v. Centennial Bank* (Jan. 30, 1987) No. 87-03, FEHC Precedential Decs. 1986-87 CEB 6, p. 19 [1987 WL 114851 (Cal.F.E.H.C.)].)

Accordingly, complainant will be awarded two years of front pay, calculated at the rate of \$143.75 per week for 104 weeks, in the amount of \$14,950. This amount will accrue interest at the rate of ten percent per year, accruing from the date it would have been earned to the date of payment.

3. Out-of-Pocket Damages

The Department submitted complainant's medical bills reflecting some of her expenses attributable to respondents on the night of her attack, for her resulting physical and mental injuries, and for her medical care, including ambulance transport, following her suicide attempt. Such damages in the amount of \$2,819.68 will be ordered for complainant's out-of-pocket losses. That sum will accrue interest at the rate of ten percent per year, compounded annually, from the effective date of this decision until the date of payment.

4. Damages for Emotional Distress

The Commission has the authority to award actual damages for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in an amount not to exceed, in combination with any administrative fines imposed, \$150,000 per aggrieved person per respondent. (Gov. Code, § 12970, subd. (a) (3) and (a)(4).) In determining whether to award damages for emotional injuries, and the amount of any award for these damages, the Commission considers relevant evidence of the effects of discrimination on the aggrieved person with respect to: physical and mental well-being; personal integrity, dignity, and privacy; ability to work, earn a living, and advance in his or her career; personal and professional reputation; family relationships; and, access to the job and ability to associate with peers and coworkers. The duration of the injury and the egregiousness of the discriminatory practice are also factors to be considered. (Gov. Code, § 12970, subd. (b); *Dept. Fair Empl. & Hous. v. Aluminum Precision Products, Inc.* (1988) No. 88-05, FEHC Precedential Decs. 1988-1989, CEB 4, pp. 10-14.)

The evidence established that Aliaho Dagmy's rape of complainant Johnson had long-lasting and profound emotional consequences for her. She was continuing to deal with both the psychological and physical consequences up the date of hearing. The record also showed Johnson's bravery and resourcefulness in escaping Aliaho Dagmy at the rest stop on November 17, 2001, and promptly contacting law enforcement so that they could apprehend him a short time thereafter. Complainant was shown to be both courageous and quick-thinking.

The immediate emotional effects on Johnson resulting from Aliaho Dagmy's attack included her feelings of humiliation and shame and fear, together with her loss of self confidence and sense of safety. She frequently thought about dying. She had recurring thoughts about Aliaho Dagmy finding her and killing her. At one point, in March 2002, overwhelmed by despair following the rape, Johnson was hospitalized after attempting suicide.

Long-term emotional consequences for complainant as a result of the rape included Johnson's feelings of vulnerability and fear of being alone. She felt ongoing despair and stress. She had trouble sleeping at night, and had frequent nightmares about Aliaho Dagmy attacking her again. She also had panic attacks, and feelings of guilt, helplessness, hopelessness and anger resulting from the attack. Her personality, described by her parents and sister as cheerful, trusting, friendly and outgoing prior to the rape, was profoundly changed. She lost about 25 pounds in the three months following the rape. She was no longer happy and easy-going. She felt that she could no longer trust people.

Complainant's credible testimony concerning the ongoing emotional distress she experienced was amply corroborated not only by her father, step-mother, mother and sister, who observed the effects on Johnson's personality and ability to interact socially first hand, but also by her treating counselor, Rebecca Rule. Rule described Johnson's symptoms of extensive emotional damage resulting from the rape, and diagnosed Johnson with post traumatic stress disorder. In Rule's view, Johnson prospectively needed up to two years of therapy to address the emotional and psychological damage she sustained.

In addition, at hearing, the injuries to Johnson's hands continued to cause her pain and discomfort where Aliaho Dagmy had physically held her down with force during the rape.

The record established that the emotional injuries sustained by complainant, considered in light of the factors set forth in Government Code section 12970, warrant an award of the maximum damages available. Given that Aliaho Dagmy and Hanna Dagmy are both named respondents, and as co-employers, are both liable for Aliaho Dagmy's conduct, the maximum award for complainant's emotional distress damages under Government Code section 12970, subdivision (a)(3), is \$300,000, less the amount of any administrative fine awarded. (Gov. Code, § 12970, subd. (a) (3) and (a)(4).)

Considering the facts and testimony elicited here, respondents Aliaho Dagmy and Hanna Dagmy, jointly and severally, will be ordered to pay Johnson the amount of \$275,000 in actual damages for her emotional distress. Interest will accrue on this amount, at the rate of ten percent per year from the effective date of this decision until the date of payment.

B. Administrative Fine

The Department also seeks an order awarding an administrative fine to vindicate the purpose and policy of the Act. The Commission has the authority to order administrative fines pursuant to the Act where it finds, by clear and convincing evidence, a respondent "has been guilty of oppression, fraud, or malice, expressed or implied, as required by section 3294 of the Civil Code." (Gov. Code, § 12970, subd. (d).) In determining the appropriate amount of an administrative fine, the Commission shall consider relevant evidence of, including but not limited to, the following: willful, intentional, or purposeful conduct; refusal to prevent or eliminate discrimination; conscious disregard for the rights of the complainant; commission of unlawful conduct; intimidation or harassment; conduct without just cause or excuse, or multiple violations of the Act. (Gov. Code, § 12970, subd. (d).)

Here the Department established, by clear and convincing evidence, that respondent Aliaho Dagmy's act of raping and terrorizing complainant was egregious, willful and malicious, constituting oppressive, intentional conduct, calculated to threaten and intimidate complainant, in conscious disregard of her civil rights. An administrative fine is appropriate. (Civ. Code, § 3294; Gov. Code, § 12970, subd. (d).)

Under the circumstances of this case, an administrative fine in the amount of \$25,000 will be awarded against Aliaho Dagmy, payable to the state's General Fund.¹² (Civ. Code, § 3294; Gov. Code, § 12970, subd. (d).) Interest will accrue on this amount at the rate of ten percent per year, from the effective date of this decision until the date of payment.

C. Civil Penalty

The Department also seeks an order awarding a civil penalty against respondents to vindicate the purpose and policy of the Act. Government Code section 12970, which governs damages awards for Ralph Act violations prosecuted under Government Code section 12948, provides that the Commission may assess a civil penalty of up to \$25,000 against a respondent for a Ralph Act violation. (Gov. Code, § 12970, subd. (e); Civ. Code, § 51.7.)

The Ralph Act, as incorporated into the FEHA, was designed to protect persons, such as complainant, from sex-based threats of violence or intimidation (Civ. Code, § 51.7) and to ensure that worksites are free from harassment and discrimination. (Stats. 1984, ch. 1754, § 1, p. 1170; *Dept. Fair Empl. & Hous. v. Bottoms*, *supra*, 2005 WL 1182392, at *17; *Dept. Fair Empl. & Hous. v. Lake County Dept. of Health Services*, *supra*, 1998, CEB 1, at p. 37.)

A civil penalty in the maximum statutory amount of \$25,000 is appropriate in this case. Respondent Aliaho Dagmy terrified complainant with his violent rape and sexual assault, injured her physically and psychologically, then stalked her in the darkness while she cowered, frightened and alone, by the highway roadside.

Accordingly, pursuant to Government Code section 12970, subdivision (e), respondent Aliaho Dagmy will be ordered to pay complainant \$25,000 as a civil penalty for his violation of the Ralph Act. Interest will be due on this amount running from the effective date of this decision to the date of payment at the rate of ten percent per year.

¹² Under the damages cap set by the Legislature in 1999, the amount of any administrative fine awarded when combined with any emotional distress damage award cannot exceed \$150,000 per complainant per respondent. (Gov. Code § 12970, subd. (a)(3).) Because this decision awards \$275,000 in actual damages for complainant's emotional injuries, the amount of the administrative fine is necessarily proscribed, so as not to exceed the statutory maximum.

D. Affirmative Relief

The Department's accusation seeks a cease and desist order enjoining respondent Dagmy from engaging in further acts of sexual harassment or acts of violence based on sex. Such an order is appropriate under Government Code section 12970, subdivision (a).

Respondent Aliaho Dagmy shall also be ordered to undergo training in the prevention of sexual violence and rape. Training is particularly appropriate here as a form of affirmative relief to prevent the recurrence of sexual harassment and violence. (Gov. Code § 12970, subd. (a)(5).)

The Department's accusation also seeks training of respondents' employees and posting of notices in the workplace about sexual harassment and violence based on sex. Given that respondents are currently out of the country, such other affirmative relief will be ordered as a condition precedent to either of them employing or supervising any employees in this state.

Finally, the Act provides that, where a respondent is found to have committed an unlawful practice while licensed by the state to "do business, provide a service, or conduct activities," and the unlawful practice occurred in connection with the exercise of such license, the Commission shall provide a copy of the decision to the licensing agency. (Gov. Code § 12970, subd. (f).)

Here, respondents Aliaho Dagmy and Hanna Dagmy were licensed by both the California Department of Alcoholic Beverage Control and the California Lottery in their business operations at Capital Hills Arco. This decision finds that, given that respondents employed complainant at Capital Hills Arco selling, *inter alia*, alcohol and lottery tickets, and given that complainant was subjected to sexual harassment and violence based on sex perpetrated by her employer in the course of her employment, sufficient connection exists under Government Code section 12970, subdivision (f), to warrant the relief provided therein. Accordingly, the California Department of Alcoholic Beverage Control and the California Lottery will be provided with copies of the Commission's decision in this case.

ORDER

1. Respondent Aliaho Dagmy aka Eli Dagmy aka Eliaho Dagmy aka Elihou Dagmy (hereinafter Aliaho Dagmy) shall immediately cease and desist from harassment, and acts and threats of violence based on sex.

2. Within 60 days of the effective date of this decision, respondents Aliaho Dagmy and Hannah Dagmy aka Lilaeh Dagmy aka Lilach Hana Dagmy aka Lilach Hanna Dagmy aka Hanna L. Dagmy aka Hana L. Dagmy (hereinafter Hanna Dagmy), jointly and severally, shall pay to complainant Melanie Kay Johnson actual damages for lost back pay accrued from November 17, 2001 to the date of hearing, in the sum of \$28,688, together with interest

on this amount, at the rate of ten percent per year, compounded annually, from the date such wages would have accrued, until the date of payment.

3. Within 60 days of the effective date of this decision, respondents Aliaho Dagmy and Hannah Dagmy, jointly and severally, shall pay complainant Melanie Kay Johnson the amount of her continuing wage loss after the administrative hearing, i.e. from September 14, 2005, for a period of two years, in the amount of \$14,950, together with interest on this amount at the rate of ten percent per year, accruing from the effective date of this decision to the date of payment.

4. Within 60 days of the effective date of this decision, respondents Aliaho Dagmy and Hannah Dagmy, jointly and severally, shall pay to complainant Melanie Kay Johnson her out of pocket losses in the amount of \$2,819.68, together with interest on this amount at the rate of ten percent per year, accruing from the effective date of this decision to the date of payment.

5. Within 60 days of the effective date of this decision, respondents Aliaho Dagmy and Hannah Dagmy, jointly and severally, shall pay to complainant Melanie Kay Johnson actual damages for her emotional distress in the amount of \$275,000, together with interest on this amount at the rate of ten percent per year, accruing from the effective date of this decision to the date of payment.

6. Within 60 days of the effective date of this decision, respondent Aliaho Dagmy shall pay to the state's General Fund an administrative fine in the amount of \$25,000, together with interest on this amount at the rate of ten percent per year, accruing from the effective date of this decision to the date of payment.

7. Within 60 days of the effective date of this decision, respondent Aliaho Dagmy shall pay to complainant Melanie Kay Johnson a civil penalty in the amount of \$25,000, together with interest on this amount at the rate of ten percent per year, accruing from the effective date of this decision to the date of payment.

8. Within 60 days after the effective date of this decision, respondent Aliaho Dagmy, at his own cost, shall attend a training program about sexual violence and rape prevention. Respondent Aliaho Dagmy shall secure advance approval from the Department of Fair Employment and Housing of the training provider, and the form and content of the training and shall provide written certification of his completion of the training to the Department and Commission.

9. Within 90 days after the effective date of this decision, respondents Aliaho Dagmy and Hanna Dagmy shall, prior to employing or supervising any employees or persons providing services pursuant to a contract in California, develop, implement and post a policy against unlawful harassment in the workplace, and circulate this policy to all said employees and persons.

10. Within 90 days after the effective date of this decision, respondents Aliaho Dagmy and Hanna Dagmy shall, prior to employing or supervising any employees or persons providing services pursuant to a contract in California, provide training to all said employees and persons in the prevention of sexual harassment and violence based on sex.

11. Within 90 days after the effective date of this decision, respondents Aliaho Dagmy and Hanna Dagmy shall, prior to employing or supervising any employees or persons providing services pursuant to a contract in California, sign notices which conform to Attachments A and B of this decision and shall post clear and legible copies of these notices in a conspicuous place in the workplace. Posted copies of these notices shall not be reduced in size, defaced, altered, or covered by other material. The notice conforming to Attachment A shall be posted for a period of 90 working days. The copy conforming to Attachment B shall be posted permanently.

12. Within 100 days after the effective date of this decision, respondents Aliaho Dagmy and Hannah Dagmy shall, in writing, notify the Department and the Commission of the nature of their compliance with this order. Respondents shall also notify the Department and Commission of any change of address and telephone number.

13. Within 90 days after the effective date of this decision, a copy of this decision will be forwarded to the California Department of Alcoholic Beverage Control.

14. Within 90 days after the effective date of this decision, a copy of this decision will be forwarded to the California Lottery.

Any party adversely affected by this decision may seek judicial review of the decision under Government Code section 11523, Code of Civil Procedure section 1094.5 and California Code of Regulations, title 2, section 7437. Any petition for judicial review and related papers should be timely served on the Department, Commission, respondent and complainant.

DATED: February 21, 2006

Caroline L. Hunt
ADMINISTRATIVE LAW JUDGE

ATTACHMENT A

NOTICE TO ALL EMPLOYEES AND PERSONS PROVIDING SERVICES PURSUANT TO A CONTRACT FOR ALIAHO DAGMY AND HANNAH DAGMY

After hearing, the California Fair Employment and Housing Commission has found that Aliaho Dagmy and Hannah Dagmy have violated the Fair Employment and Housing Act. (Dept. Fair Empl. & Hous. v. Capital Hills Arco AM-PM, et al (2006) No. 06-____.)

As a result of this decision, Aliaho Dagmy and Hannah Dagmy have been ordered to post this notice, and to take the following actions:

1. Cease and desist from harassment, violence, or intimidation by threats of violence based on sex.
2. Pay complainant back and front pay.
3. Pay a monetary award to the complainant for emotional distress.
4. Pay an administrative fine to the state's General Fund.
5. Pay a civil penalty to complainant.
6. Develop a formal written policy against sexual harassment and violence based on sex.
7. Post a statement of employees' rights and remedies under the Fair Employment and Housing Act.
8. Undergo and provide training on prevention of sexual harassment and violence based on sex.

DATED: _____

BY: _____
Aliaho Dagmy

DATED: _____

BY: _____
Hannah Dagmy

THIS NOTICE IS REQUIRED TO BE POSTED UNDER PENALTY OF LAW BY THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING COMMISSION. IT SHALL REMAIN POSTED FOR NINETY (90) CONSECUTIVE WORKING DAYS IN THIS LOCATION AND SHALL NOT BE ALTERED, REDUCED, OBSCURED, OR OTHERWISE TAMPERED WITH IN ANY WAY THAT HINDERS ITS VISIBILITY.

ATTACHMENT B

NOTICE TO ALL EMPLOYEES AND PERSONS PROVIDING SERVICES PURSUANT TO A CONTRACT FOR ALIAHO DAGMY AND HANNAH DAGMY

YOUR RIGHTS AND REMEDIES UNDER THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT

YOU HAVE THE RIGHT TO BE FREE FROM UNLAWFUL EMPLOYMENT HARASSMENT AND VIOLENCE OR INTIMIDATION BY THREATS OF VIOLENCE

The California Fair Employment and Housing Act prohibits harassment because of race, religious creed, color, national origin, ancestry, physical and mental disability, medical condition, marital status, sex, sexual orientation, and age. You have the right to be free of all such harassment in your workplace. Such harassment may take various forms, including:

VERBAL CONDUCT such as epithets, derogatory comments, slurs, unwanted sexual advances, invitations, comments, or name-calling

VISUAL CONDUCT such as derogatory posters, cartoons, drawings, gestures, or mimicking sexual acts

PHYSICAL CONDUCT such as rape, assault, blocking normal movement, stalking, touching body parts or interference with work directed at you because of your sex, sexual orientation, or other protected basis

THREATS AND DEMANDS to submit to sexual requests in order to keep your job or avoid some other loss, and offers of job benefits in return for sexual favors

RETALIATION for having resisted or reported the harassment

The law prohibits any form of protected-basis harassment that impairs your working ability or emotional well-being at work. You may have a claim of harassment even if you have not lost your job or some other benefit.

You also have the right to be free in the workplace from violence, or intimidation by threats of violence, because of your race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute.

YOU HAVE THE RIGHT TO COMPLAIN ABOUT SUCH HARASSMENT, THREATS, OR VIOLENCE AND GET RELIEF.

If you believe that you are being harassed on the job because of your sex, sexual orientation, race, ancestry or other protected basis, you should use the procedures outlined in this policy to file a complaint and have it investigated.

ATTACHMENT B
PAGE TWO

THE CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING investigates and prosecutes complaints of such harassment in employment. If you think you are being harassed or that you have been retaliated against for resisting or complaining about harassment, you may file a complaint with the Department at:

Department of Fair Employment and Housing
1010 Tower Way
Bakersfield, CA 93309-1586
(805) 395-2729 or (800) 884-1684

The Department will investigate your complaint. If the complaint has merit, the Department will attempt to resolve it. If no resolution is possible, the Department will prosecute the case with its own attorney before the Fair Employment and Housing Commission or in court. The Commission or court may order the harassment stopped and can require your employer to reinstate you and to pay back wages, front pay and other out-of-pocket losses, damages for emotional injury, administrative fines, civil penalties or punitive damages, and other appropriate relief.

DATED: _____

BY: _____
Aliaho Dagmy

DATED: _____

BY: _____
Hannah Dagmy

THIS NOTICE IS REQUIRED TO BE POSTED UNDER PENALTY OF LAW BY THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING COMMISSION. IT SHALL REMAIN PERMANENTLY POSTED IN THIS LOCATION AND SHALL NOT BE ALTERED, REDUCED, OBSCURED, OR OTHERWISE TAMPERED WITH IN ANY WAY THAT HINDERS ITS VISIBILITY.